



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0159]

RIN 1625-AA00

Safety Zone; Recurring Marine Events, Sector Key West, Florida

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing moving safety zones for certain waters within the Sector Key West Captain of the Port (COTP) Zone for five annually recurring marine events.

This action is necessary to provide for the safety of the participants, participant vessels, and the general public on the navigable waters of the United States during these events. When these safety zones are activated and subject to enforcement, this rule would prohibit persons and vessels, other than those participating in the event, from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP Key West or a designated representative.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0159 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rulemaking, call or email Lieutenant Scott Ledee, Waterways Management Division Chief, Sector Key West, FL, U. S. Coast Guard; telephone (305) 292-8768, e-mail SKWWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

Swim events and marine events are held on an annual recurring basis on the navigable waters within the Sector Key West COTP Zone. In the past, the Coast Guard has established safety zones for these annual recurring events on a case by case basis to ensure the protection of the maritime public and event participants from the hazards associated with these events. This rule will consistently apprise the public in a timely manner through permanent publication in Title 33 of the Code of Federal Regulations. The Table in this rule lists each annual recurring event requiring a regulated area as administered by the Coast Guard.

By establishing a permanent regulation containing these annual recurring marine events, the Coast Guard would eliminate the need to establish temporary rules for events that occur on an annual basis. On May 16, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Recurring Marine Events, Sector Key West, Florida, 82 FR 22448. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these recurring marine events. During the comment period that ended June 15,

2017, we received no comments.

The legal basis and authorities for this rule is found in 33 U.S.C. 1231.

III. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published May 16, 2017.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM. This rule establishes five new annually recurring marine events to 33 CFR 165.786, as listed in the attached Table to § 165.786. The Table provides the event name, the sponsor name, the location of the event, and the approximate date and time of each event. The specific times, dates, regulated areas and enforcement period for each event will be provided through Broadcast Notice to Mariners, a Notice of Enforcement published in the Federal Register, and the Local Notice to Mariners which can be found at the following link:

<https://www.navcen.uscg.gov/?pageName=lnmDistrict®ion=7>.

The safety zones established by this rule would cover all waters within 50 yards in front of the lead safety vessel preceding the first event participants, 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of the safety vessels.

This rule prevents vessels from transiting areas specifically designated as safety zones during the periods of enforcement to ensure the protection of the maritime public and event participants from the hazards associated with the listed annual recurring events. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP Key West or a designated representative.

The regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on: (1) the safety zones would only be enforced during limited time intervals during the swim and paddle events; (2) vessels may be authorized to enter the regulated areas with permission of the COTP Key West or a designated representative; and (3) advanced notification of closures will be made via Local Notice to Mariners, Broadcast to Mariners, and through a Notice of Enforcement published in the Federal Register.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from

the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section IV.A above, this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of

1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add a new § 165.786 to read as follows:

§ 165.786 Safety Zone; recurring marine events, Sector Key West, Florida.

(a) **Regulations.** (1) In accordance with 33 CFR 165.23, entering, transiting through, anchoring in, or remaining within the safety zones listed in the Table to §

165.786 during periods of enforcement is prohibited unless authorized by the Captain of the Port (COTP) Sector Key West or a designated representative.

(2) These regulations will be enforced for the duration of each event.

Notifications of exact dates and times of the enforcement period will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners and through a Notice of Enforcement in the Federal Register well in advance of the events. Mariners should consult the Federal Register or their Local Notice to Mariners to remain apprised of schedule their Local Notice to Mariners to remain apprised of schedule or event changes.

(3) During periods of enforcement, upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator must proceed as directed.

(4) Vessel operators desiring to enter, transit through, anchor in, or remain within the regulated area during the enforcement period shall contact the COTP Sector Key West or the designated on-scene representative via VHF channel 16 or call the Sector Key West Command Center at (305) 292-8727 to obtain permission.

(b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP Key West in the enforcement of the regulated areas.

(c) The COTP Key West or designated representative may delay or terminate any event in this subpart at any time to ensure safety of life or property. Such action may be justified as a result of weather, traffic density, spectator operation, or participant behavior.

(d) The regulated area for all marine events listed in Table 1 of § 165.786 is that area of navigable waters within 50 yards in front of the lead safety vessel preceding the first event participants, 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of safety vessels.

Table to § 165.786

[Datum NAD 1983]

4.0	APRIL
4.1 Key West Paddle Board Classic	Event Type: Paddle Event.
	Sponsor: Lazy Dog Adventure Outfitters
	Dates: A one day event held on the last weekend in April.
	Time (Approximate): 9:00 a.m. to 4:00 p.m., daily.
	Location(s): Begins at Higgs Beach in Key West, Florida at a point Latitude 24°32.81' N., longitude 081°47.20' W., thence west offshore of Fort Zach State Park to latitude 24°32.72' N., longitude 081°48.77' W., thence north through Key West Harbor to latitude 24°34.10' N., longitude 081°48.14' W., thence east through Fleming Cut to latitude 24°34.42' N., longitude 081°45.08' W., south on Cow Key Channel to latitude 24°33.04' N., longitude 081°44.98' W., and thence west to point of origin at latitude 24°32.81' N., longitude 081°47.20' W.
6.0	JUNE
6.1 FKCC Swim Around Key West	Event Type: Swim Event.
	Sponsor: Florida Keys Community College
	Dates: A one day event held on a Saturday in June.
	Time (Approximate): 7:30 a.m. to 4:00 p.m.
	Location(s): Begins at Smathers Beach in Key West, Florida at a point Latitude 24°33.01' N., longitude 081°46.47' W., thence west offshore of Fort Zach State Park to latitude 24°32.72' N., longitude 081°48.77' W., thence north through Key West Harbor to latitude 24°34.10' N., longitude 081°48.14' W., thence east through Fleming Cut to latitude 24°34.42' N., longitude 081°45.08' W., south on Cow Key Channel to latitude 24°33.04' N., longitude 081°44.98' W., and thence west to point of origin at latitude 24°33.01' N., longitude 081°46.47' W.
6.2 Annual Swim Around Key West	Event Type: Swim Event.
	Sponsor: Key West Athletic Association
	Dates: A one day event held on a Saturday in June.

	Time (Approximate): 7:30 a.m. to 4:00 p.m.
	Location(s): Begins at Smathers Beach in Key West, Florida at a point Latitude 24°33.01' N., longitude 081°46.47' W., thence west offshore of Fort Zach State Park to latitude 24°32.72' N., longitude 081°48.77' W., thence north through Key West Harbor to latitude 24°34.10' N., longitude 081°48.14' W., thence east through Fleming Cut to latitude 24°34.42' N., longitude 081°45.08' W., south on Cow Key Channel to latitude 24°33.04' N., longitude 081°44.98' W., and thence west to point of origin at latitude 24°33.01' N., longitude 081°46.47' W.
7.0	JULY
7.1 Hemingway Paddle Board Race	Event Type: Paddle Event.
	Sponsor: Hemingway Sunset Run LLC
	Dates: A one day event held on the 2 nd or 3 rd Saturday in July.
	Time (Approximate): 6:00 p.m. to 7:30 p.m.
	Location(s): Begins at Higgs Beach in Key West, Florida at a point Latitude 24°32.79' N., longitude 081°47.74' W., thence east to latitude 24°32.56' N., longitude 081°47.11' W., thence east to latitude 24°33.01' N., longitude 081°46.47' W., thence west to latitude 24°32.56' N., longitude 081°47.11' W., and thence west to point of origin at latitude 24°32.79' N., longitude 081°47.74' W.
9.0	SEPTEMBER
9.1 Swim for Alligator Lighthouse	Event Type: Swim Event.
	Sponsor: Friends of the Pool
	Dates: A one day event held on the 3 rd Saturday in September.
	Time (Approximate): 7:30 a.m. to 4:30 p.m.

	<p>Location(s) (Primary): Beginning at a point Latitude 24°54.82' N., longitude 080°38.03' W., thence to latitude 24°54.36' N., longitude 080°37.72' W., thence to latitude 24°51.07' N., longitude 080°37.14' W., thence to latitude 24°54.36' N., longitude 080°37.72' W., thence to point of origin at latitude 24°54.82' N., longitude 080°38.03'W.</p> <p>Location(s) (Alternate)¹: Beginning at a point Latitude 24°54.82' N., longitude 080°38.03'W., thence to latitude 24°53.25' N., longitude 080°37.04' W., thence to latitude 24°52.05' N., longitude 080°38.85' W., thence to latitude 24°54.36' N., longitude 080°37.72' W., thence to point of origin at latitude 24°54.82' N., longitude 080°38.03' W.</p>
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Dated: April 3, 2018

Jeffrey A. Janszen,

Captain, U.S. Coast Guard,

Captain of the Port Key West.

[FR Doc. 2018-08014 Filed: 4/16/2018 8:45 am; Publication Date: 4/17/2018]